



# California Regional Water Quality Control Board

## Los Angeles Region



Linda S. Adams  
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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Arnold Schwarzenegger  
Governor

August 29, 2008

Mr. John McMullen  
Facility Manager,  
Stellar Biotechnologies, Inc.  
417 E. Hueneme PMB #170,  
Port Hueneme, CA 93041

VIA CERTIFIED MAIL  
CERTIFIED MAIL NUMBER  
Claim No. 7007 2560 0001 7889 1229

**SETTLEMENT OFFER NO. R4-2008-0054-M: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE NPDES PERMIT FOR STELLAR BIOTECHNOLOGIES, INC., 417 EAST HUENEME PMB #170, PORT HUENEME (ORDER NOS. 01-075 and R4-2007-0004, NPDES PERMIT NO. CA0063070, CI NO. 7219)**

Dear Mr. McMullen:

This letter is to notify Stellar Biotechnologies, Inc. (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the State Water Resources Control Board's water quality data system and to allow the Permittee to participate in the Los Angeles Regional Water Quality Control Board's (Regional Board) Expedited Payment Program for Effluent or Reporting Violations (Expedited Payment Program) to address liability that may be assessed pursuant to California Water Code sections 13385 and 13385.1.

### NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) as of August 29, 2008, the Regional Board alleges that the Permittee has violated the effluent limitations, reporting violations, or California Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A". The Permittee will have the opportunity to address the alleged violations as discussed below.

### STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a Mandatory Minimum Penalty of \$3,000 for specified serious and chronic effluent limit violations. The Permittee is subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred<sup>1</sup>. The formal enforcement action that the Regional Board uses to assess such liability is an administrative civil liability complaint, although the Regional Board may instead

<sup>1</sup> Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) Further, the Permittee has not been substantially prejudiced by the passage of time between the date(s) that the Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Regional Board. Regional Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.

**California Environmental Protection Agency**



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refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

**OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:**

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Regional Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Regional Board makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty of \$69,000 for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Regional Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the NOV. Accordingly, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NOV.

**PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:**

If you accept this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order" (Acceptance and Waiver) on or before **September 29, 2008**.

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date specified above. The Regional Board staff will evaluate the contested violation and take one of two actions:

- 1) The Regional Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver for the remainder of the violations; or
- 2) The Regional Board staff will determine that the alleged violation is meritorious, and will notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver.

If the Permittee chooses not to make a payment in response to the Regional Board staff's determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.

**CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:**

Federal regulations require the Regional Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NDPES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, the Regional Board staff will publish a notice of the proposed resolution of the violations.



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**AMENDED ACCEPTANCE OF CONDITIONAL RESOLUTION  
AND WAIVER OF RIGHT TO HEARING: (proposed) ORDER**

Stellar Biotechnologies, Inc.  
Settlement Offer No. R4-2008-0054-M  
NPDES Permit No. CA0063070

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Los Angeles Regional Water Quality Control Board (Regional Board), Stellar Biotechnologies, Inc. (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the allegations of violations described in the Notice of Violation (NOV), which is attached hereto as Exhibit "1" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Permittee agrees to pay the penalties required by California Water Code section 13385, in the sum of \$3,000 (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that this Acceptance and Waiver waives its right to contest the allegations in the NOV and the amount of civil liability for such violations.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NOV.

Upon execution by the Permittee, the completed Acceptance and Waiver shall be returned to:

Pansy Yuen, Enforcement Unit  
Expedited Payment Program  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Regional Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that causes the Regional Board Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Acceptance and Waiver.

Settlement Offer No. R4-2008-0054-M  
CI No. 7219, NPDES Permit No. CA0063070

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee further understands that once the Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13385(n)(1) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to sections 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$3,000 liability shall be paid by a cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Regional Board Executive Officer.

Please mail check to:

State Water Resources Control Board  
Re: Order No. R4-2008-0054-M  
Division of Administrative Services, Accounting Branch  
1001 I Street, 18<sup>th</sup> Floor, [95814]  
P.O. Box 1888  
Sacramento, California 95812-1888

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

Stellar Biotechnologies, Inc

By:

(Signed Name)

(Date)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

Date: \_\_\_\_\_

By:

Samuel Unger, P.E.  
Executive Officer

## AMENDED EXHIBIT "1" - NOTICE OF VIOLATION

Stellar Biotechnologies, Inc.

Effluent Limit Violations

CI No. 7219

| Date       | Monitoring Period | Violation Type   | Parameter | Reported Value | Permit Limit | Units    | Pollutant Category | % Exceeded | Serious/Chronic | Water Code Section 13385 | Penalty        |
|------------|-------------------|------------------|-----------|----------------|--------------|----------|--------------------|------------|-----------------|--------------------------|----------------|
| 12/06/2001 | 4th Quarter 2001  | 30-Day Average*  | Zn        | 50             | 47.3         | mg/L     | 2                  | 6%         | Chronic         | (i)1                     | Dismissed      |
| 01/28/2002 | 1st Quarter 2002  | Instantaneous    | pH        | 8.55           | 6.5 - 8.5    | pH Units | OEVI               | N/A        | Chronic         | (i)1                     | \$0            |
| 02/11/2002 | 1st Quarter 2002  | Instantaneous    | pH        | 8.57           | 6.5 - 8.5    | pH Units | OEVI               | N/A        | Chronic         | (i)1                     | \$0            |
| 02/26/2002 | 1st Quarter 2002  | Instantaneous    | pH        | 8.60           | 6.5 - 8.5    | pH Units | OEVI               | N/A        | Chronic         | (i)1                     | \$0            |
| 03/11/2002 | 1st Quarter 2002  | Instantaneous    | pH        | 8.57           | 6.5 - 8.5    | pH Units | OEVI               | N/A        | Chronic         | (i)1                     | \$3,000        |
| 12/12/2002 | 4th Quarter 2002  | Daily Maximum    | TSS       | 110            | 75           | mg/L     | 1                  | 47%        | Serious         | (h)1                     | Dismissed      |
| 12/12/2002 | 4th Quarter 2002  | Daily Maximum    | Zn        | 110            | 94.9         | mg/L     | 2                  | 16%        | Chronic         | (i)1                     | Dismissed      |
| 12/12/2002 | 4th Quarter 2002  | 30-Day Average*  | TSS       | 110            | 50           | mg/L     | 1                  | 120%       | Serious         | (h)1                     | Dismissed      |
| 12/12/2002 | 4th Quarter 2002  | 30-Day Average*  | Zn        | 110            | 47.3         | mg/L     | 2                  | 133%       | Serious         | (h)1                     | Dismissed      |
| 03/14/2003 | 1st Quarter 2003  | Daily Maximum    | TSS       | 80             | 75           | mg/L     | 1                  | 7%         | Chronic         | (i)1                     | Dismissed      |
| 03/14/2003 | 1st Quarter 2003  | 30-Day Average*  | TSS       | 80             | 50           | mg/L     | 1                  | 60%        | Serious         | (h)1                     | Dismissed      |
| 06/25/2003 | 2nd Quarter 2003  | Daily Maximum    | TSS       | 100            | 75           | mg/L     | 1                  | 33%        | Chronic         | (i)1                     | Dismissed      |
| 06/25/2003 | 2nd Quarter 2003  | 30-Day Average*  | TSS       | 100            | 50           | mg/L     | 1                  | 100%       | Serious         | (h)1                     | Dismissed      |
| 11/21/2005 | 4th Quarter 2005  | Instantaneous    | pH        | 9.79           | 6.5 - 8.5    | pH Units | OEVI               | N/A        | Chronic         | (i)1                     | Dismissed      |
| 12/20/2005 | 4th Quarter 2005  | Daily Maximum    | Cu        | 20             | 5.78         | mg/L     | 2                  | 246%       | Serious         | (h)1                     | Dismissed      |
| 12/20/2005 | 4th Quarter 2005  | 30-Day Average*  | Cu        | 20             | 2.88         | mg/L     | 2                  | 594%       | Serious         | (h)1                     | Dismissed      |
| 09/08/2006 | 3rd Quarter 2006  | 30-Day Average*  | TSS       | 70             | 50           | mg/L     | 1                  | 40%        | Serious         | (h)1                     | Dismissed      |
| 10/01/2006 | 4th Quarter 2006  | Instantaneous    | pH        | 9.45           | 6.5 - 8.5    | pH Units | OEVI               | N/A        | Chronic         | (i)1                     | Dismissed      |
| 06/20/2007 | 2nd Quarter 2007  | Daily Maximum    | Cu        | 99             | 5.8          | mg/L     | 2                  | 1607%      | Serious         | (h)1                     | Dismissed      |
| 06/20/2007 | 2nd Quarter 2007  | Monthly Average* | Cu        | 99             | 2.9          | mg/L     | 2                  | 3314%      | Serious         | (h)1                     | Dismissed      |
| 09/24/2007 | 3rd Quarter 2007  | Daily Maximum    | Cu        | 278            | 5.8          | mg/L     | 2                  | 4693%      | Serious         | (h)1                     | Dismissed      |
| 09/24/2007 | 3rd Quarter 2007  | Monthly Average* | Cu        | 278            | 2.9          | mg/L     | 2                  | 9486%      | Serious         | (h)1                     | Dismissed      |
| 12/19/2007 | 4th Quarter 2007  | Daily Maximum    | Cu        | 172            | 5.8          | mg/L     | 2                  | 2866%      | Serious         | (h)1                     | Dismissed      |
| 12/19/2007 | 4th Quarter 2007  | Monthly Average* | Cu        | 172            | 2.9          | mg/L     | 2                  | 5831%      | Serious         | (h)1                     | Dismissed      |
| 03/13/2008 | 1st Quarter 2008  | Daily Maximum    | Cu        | 110            | 5.8          | mg/L     | 2                  | 1797%      | Serious         | (h)1                     | Dismissed      |
| 03/13/2008 | 1st Quarter 2008  | Daily Maximum    | Cu        | 0.24           | 0.21         | mg/L     | 2                  | 14%        | Chronic         | (i)1                     | Dismissed      |
| 03/13/2008 | 1st Quarter 2008  | Monthly Average* | Cu        | 110            | 2.9          | mg/L     | 2                  | 3693%      | Serious         | (h)1                     | Dismissed      |
| 03/13/2008 | 1st Quarter 2008  | Monthly Average* | Cu        | 0.24           | 0.1          | mg/L     | 2                  | 140%       | Serious         | (h)1                     | Dismissed      |
| 06/16/2008 | 2nd Quarter 2008  | Daily Maximum    | Cu        | 40             | 5.8          | mg/L     | 2                  | 590%       | Serious         | (h)1                     | Dismissed      |
| 06/16/2008 | 2nd Quarter 2008  | Monthly Average* | Cu        | 40             | 2.9          | mg/L     | 2                  | 1279%      | Serious         | (h)1                     | Dismissed      |
|            |                   |                  |           |                |              |          |                    |            |                 | <b>Total</b>             | <b>\$3,000</b> |

\* Staff Calculation